In the Supreme Court of the United States

OCTOBER TERM, 1944.

No. 45.

BESTER WILLIAM STEELE,
Petitioner,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association, *et al.*

On Writ of Certiorari to the Supreme Court of the State of Alabama.

BRIEF FOR RESPONDENTS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AND W. H. THOMAS.

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INDEX.

Opinions Below 1

Jurisdiction 1

Statement of the Case 2

Summary of Argument 4

Argument 6

I. By statute in Alabama this suit may be maintained against the Brotherhood, an unincorporated association, only if the action lies against all members of the association individually. No statute or decision supports the theory that individual members of an association, acting as collective bargaining agent, are personally liable for the non-feasance, misfeasance or malfeasance of such bargaining agent 6

II. Neither the Complaint in this case (R. 83 to 98, inclusive) nor the interpretation thereof contained in the decision of the Supreme Court of Alabama (R. 131 to 145, inclusive) presents a case where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution or any statute of the United States, and hence the action of the Supreme Court of Alabama is not subject to review by certiorari by this Court 13

III. The decision of the Supreme Court of Alabama sustaining the demurrer to the original complaint here sought to be reviewed is grounded entirely and properly upon state law 20

IV. Petitioner should exhaust his remedies under the administrative provisions of the Railway Labor Act before resorting to the courts for relief through the injunctive process 26

V. Supervision or review of the conduct of collective bargaining representatives acting under the Railway Labor Act is not a function of the courts .. 31

VI. The relationship of a bargaining representative under the Railway Labor Act to a member of the class or craft bargained for is sui generis and cannot be subjected to the rules of law applicable to ordinary agencies or trusteeships 35

Conclusion 39

TABLE OF AUTHORITIES.

Cases.

Arkansas Southern R. R. Co. v. German Nat. Bank, 207 U. S. 270 6

Berman v. Wreck-A-Pair Co., 236 Ala. 301, 182 So. 54.. 24

Brashar v. First National Bank, 232 Ala. 340, 168 So. 42 35

Brotherhood v. Green, 206 Ala. 196, 89 So. 435 7

Brotherhood of Railway and Steamship Clerks, etc. v. United Transport Service Employees, etc., 64 S. Ct. 260, 320 U. S. 715 38

Brotherhood of Railroad Trainmen, etc. v. Toledo, P. & W. R. R. (Jan. 17, 1944), 64 S. Ct. 413, 321 U. S. 50 ..... 30, 31

Campbell v. Chase National Bank, 71 Fed. (2d) 669, 94 A. L. R. 708 17

Cleveland Storage Co. v. Guardian Trust Co., 222 Ala. 210, 131 So. 634 23

Empire City Job Print, Inc. v. Harbord, 265 N. Y. S. 451, 148 Misc. 231 8

Gaar, Scott & Co. v. Shannon, 223 U. S. 468 6

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for M-K-T Railroad, etc. v. Missouri-Kansas-Texas Railroad Company (Nov. 22, 1943) 88 L. Ed. 104, 64 S. Ct. 146, 320 U. S. 323 32

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Co. v. Southern Pacific Co., et al., 320 U. S. 338 ..... 32, 33

Great Northern R. Co. v. Leonidas, 305 U. S. 1 6

Gully, etc. v. First National Bank, 299 U. S. 109, 57 S. Ct. 96 13

Hodges v. United States, 203 U. S. 1, 51 L. Ed. 65 17

Iron Age Pub. Co. v. Western Union Tel. Co., 83 Ala. 498, 3 So. 449 22

Levering, etc. v. Morrin, 289 U. S. 103 19

McCabe v. Goodfellow, 133 N. Y. 89, 30 N. E. 728 8

McCoy v. Shaw, 277 U. S. 302 6

McMurray v. Brotherhood of Railroad Trainmen, 50 F. 2d 968 (D. C., W. D. Penn., 1931) 12

Moore v. Illinois Central R. R. Co., 312 U. S. 630, 61 S. Ct. 754 ..... 31, 34

People v. Brotherhood of Painters, etc., 218 N. Y. 115, 112 N. E. 752 8

Rogers v. Brightman, 189 Ala. 228, 66 So. 71 35

Roquemore, etc. v. Mitchell, 167 Ala. 475, 52 So. 423, 140 Am. St. 52 21

Schouten v. Alpine, 215 N. Y. 225, 109 N. E. 244 8

Shaup v. Grand International Brotherhood of Locomotive Engineers, 223 Ala. 202, 135 So. 337 25

Switchmen's Union of N. A., et al. v. National Mediation Board, et al., 320 U. S. 297, 88 L. Ed. 89, 64 S. Ct. 95 (Nov. 22, 1943) 32

Teague v. Brotherhood of Locomotive Firemen and Enginemen, 127 Fed. (2d) 53 (Circuit Court of Appeals, Sixth Circuit, April 9, 1942) 35

Teal v. Mixon, 233 Ala. 23, 169 So. 477 24

Tuscaloosa Co. v. Shamblin, 233 Ala. 6, 169 So. 234 24

U. S. Fidelity, etc. Co. v. Millonas, 206 Ala. 147, 89 So. 732, 29 A. L. R. 520 25

United States v. White, 64 S. Ct. 1248 (decided June 12, 1944) 10

Text.

Hughes, Federal Practice Jurisdiction and Procedure, Vol. 1, Section 543 14

Statutes.

Alabama Code 1940, Title 7, Section 143 ..... 6, 7

Alabama Code 1940, Title 7, Section 156 24

Alabama Code 1940, Title 7, Sections 477-486 22

Alabama Code 1940, Title 7, Sections 487-490 22

McKinney's Consolidated Laws of New York, Title 18 A, Sec. 13 8

Railway Labor Act, U. S. C. A., Title 45, Section 152, Ninth 29

Railway Labor Act, U. S. C. A., Title 45, Section 153, First 28

U. S. C. A., Title 28, Section 344 ..... 1, 13

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LOUISVILLE & NASHVILLE RAILROAD COMPANY, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association, *et al.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA.

BRIEF FOR RESPONDENTS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AND W. H. THOMAS.

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

OPINIONS BELOW:

(1) The decree of the Circuit Court of Jefferson County, Alabama, in Equity, rendered April 27, 1943, was not officially reported but appears in the record at page 124.

(2) The opinion of the Supreme Court of Alabama is reported as *Steele v. Louisville & Nashville Railroad Co., et al.*, 245 Ala. 113, 16 So. (2d) 416.

JURISDICTION.

As these respondents understand, petitioner seeks review under Section 237 of the Judicial Code as amended by Act of February 13, 1935, 43 Stat. 939 (U. S. C. A. Title 28, Section 344).

STATEMENT OF THE CASE.

The petitioner, as complainant, filed his bill of complaint (R. 84) in the Circuit Court of Jefferson County, Alabama, in Equity, against the Railroad, the Brotherhood and certain individual members of the Brotherhood. In this bill petitioner alleged that he was a negro fireman employed by the Louisville & Nashville Railroad and that he sued on behalf of himself and as representative of all other negro firemen and helpers employed by said Railroad.

The bill alleged that petitioner was fifty-five years of age, in good health and had been employed as a locomotive fireman for the Railroad since February 4, 1910, and had acquired certain seniority rights under a collective bargaining agreement between the Railroad and its locomotive firemen and hostlers, dated March 1, 1929 (R. 85-86); that white firemen constituted a majority of the craft or class on the Railroad as a whole, although on certain divisions the negro firemen constituted a majority (R. 86); that since the passage of the Railway Labor Act the Brotherhood, which admits only white men to membership therein, has acted as the bargaining representative of the entire craft; that the negro firemen have never been given an opportunity to participate in the choosing of such representative, but by reason of their minority position they were compelled to and did accept the Brotherhood as such representative under the Railway Labor Act (R. 87); that the Brotherhood thus assumed a confidential relationship with each fireman and undertook the performance of a fiduciary duty to represent them impartially and in good faith; that it therefore became the duty of such representative to give each fireman reasonable notice of any action proposed by such representative which might be adverse to his interest, with an opportunity to be heard and a chance to vote thereon; to make full disclosure of actions, not to discriminate between members of the class, and generally

to conform to the rules of law governing the relations existing between principal and agent (R. 87, 88).

After averring a general purpose and course of conduct alleged to be hostile and disloyal to petitioner and the minority group represented by him, in violation of the alleged duties of the Brotherhood as such representative, it is alleged that on March 28, 1940, in fraud of the petitioner and other negro firemen, without notice, hearing or vote, the Brotherhood, as such representative under the Railway Labor Act, served on the Railroad a notice or request for certain changes in the existing collective bargaining agreement of March 1, 1929 (R. 146), and asked for a conference for the consideration of such proposed changes. (R. 88,— for copy of notice of March 28, 1940, see R. 59 and 60.)

After negotiations pursuant to the notice dated March 28, 1940, it is alleged that the Brotherhood, as such representative under the Railway Labor Act, negotiated an amendatory agreement dated February 18, 1941 (R. 10, 11, 12 and 13), and on May 12, 1941, executed a supplemental agreement pursuant to the terms of the agreement of February 18, 1941 (R. 13 to 21).

It is alleged in the complaint that such changes or modifications adversely affected the seniority rights formerly enjoyed by the petitioner and other negro firemen under the agreement of March 1, 1929 (R. 146, *et seq.*).

The complaint sought relief as follows:

(1) To enjoin the enforcement of the alleged amendments of the basic agreement negotiated between the railroad and the Brotherhood for the benefit of the firemen as a craft under the Railway Labor Act (Chapter 8, Title 45, U. S. C. A.) (R. 96);

(2) For discovery from the railroad and Brotherhood of certain detailed information with respect to the earnings of firemen alleged to have received benefits under the amendment or modification of such agreement; and information with respect to the negotiations

by which the alleged amendment or modification was effected (R. 96);

(3) For an injunction against the Brotherhood, its officers and agents and against the individual respondents, enjoining them from acting for petitioner or others similarly situated, so long as such respondents refuse to give petitioner, or such others, notice and an opportunity to be heard and an opportunity to vote on proposals adversely affecting their interests, and so long as respondents discriminate against petitioner or those similarly situated (R. 96-97);

(4) For a declaratory judgment declaring the respective rights, status and other legal relations of the parties in, to and by reason of the matters in controversy (R. 97);

(5) For $50,000.00 damages claimed by petitioner against the Brotherhood for alleged injuries sustained by him as a consequence of the alleged wrongful acts of the Brotherhood in negotiating such amendment of modification to such employment agreement (R. 97);

(6) For damages against the Brotherhood for alleged injuries sustained by other firemen similarly situated, who may appear, submit to the jurisdiction of the Court and establish their claims for damages (R. 97).

Demurrers of the respondents to the complaint as last amended (referred to as "substituted amended complaint") were sustained, and the complaint was dismissed by a decree of the Circuit Court of Jefferson County, Alabama, in Equity, (R. 124, 125, 126), which decree was affirmed by the Supreme Court of Alabama (R. 131 to 144).

SUMMARY OF ARGUMENT.

I. By statute in Alabama this suit may be maintained against the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association, only if the action lies against all members of the Brotherhood individually. No statute or decision supports the theory that individual

members of an association, acting as a collective bargaining agent, are personally liable for the non-feasance, misfeasance or malfeasance of such bargaining agent. Petitioner's right to maintain the action under the Alabama statute was questioned by demurrer which was severally and separately sustained by the trial court and affirmed by the Supreme Court of Alabama. Disposition of this question, in addition to many others raised by the demurrer, does not involve the application of federal laws and therefore this Court, under its decisions, will not reverse the order dismissing the complaint.

II. Neither the complaint in this case (R. 83 to 98, inclusive) nor the interpretation thereof contained in the decision of the Supreme Court of Alabama (R. 131 to 144, inclusive) presents a case where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution or any statute of the United States, and hence the judgment of the Supreme Court of Alabama is not subject to review on certiorari by this Court.

III. The decision of the Supreme Court of Alabama sustaining the demurrer to the complaint here sought to be reviewed is grounded entirely and properly upon state law.

IV. Petitioner should exhaust his remedies under the administrative provisions of the Railway Labor Act before turning to the courts for relief through the injunctive process.

V. Supervision or review of the conduct of collective bargaining representatives is not a function of the courts.

VI. The relationship of a bargaining representative under the Railway Labor Act to a member of the class or craft bargained for is *sui generis* and cannot be subjected to the rules of law applicable to ordinary agencies or trusteeships.

ARGUMENT.

I.

By statute in Alabama this suit may be maintained against the Brotherhood, an unincorporated association, only if the action lies against all members of the association individually. No statute or decision supports the theory that individual members of an association, acting as collective bargaining agent, are personally liable for the non-feasance, misfeasance or malfeasance of such bargaining agent.

At the threshold of this case we are met with the problem presented by the foregoing statement. As will be developed in this section of the brief, petitioner's right to maintain the action against the Brotherhood was challenged by demurrer (R. 99). *The separate and several grounds of demurrer were sustained by the trial court* (R. 126). Upon appeal the Supreme Court of Alabama affirmed the decree appealed from in all respects (R. 144). The grounds for demurrer were many in number and, as noted, raised the question of petitioner's right to maintain the action under Section 143, Title 7, Code of Alabama, 1940. (See grounds numbered 4 (R. 99), 12, 13, 14, 15 and 16 (R. 100) and 17 and 18 (R. 101).) Disposition of this question (as well as others raised by the demurrer, to some of which we will hereafter allude) manifestly does not involve the application of federal laws and hence may be termed non-federal grounds for dismissal.

It is well established that before this Court can reverse the Supreme Court of Alabama it must find that all of the non-federal grounds upon which the decree of dismissal was based were so plainly unfounded that the dismissal may be regarded as arbitrary or a mere device to prevent review on the alleged federal question. *McCoy v. Shaw*, 277 U. S. 302; *Arkansas Southern R. R. Co. v. German Nat. Bank*, 207 U. S. 270; *Gaar, Scott & Co. v. Shannon*, 223 U. S. 468; *Great Northern R. Co. v. Leonidas*, 305 U. S. 1.

We will undertake in this section to demonstrate that the challenge of petitioner's right to maintain the action against the Brotherhood was well founded and that the decision of the courts of Alabama sustaining this ground of demurrer was not arbitrary.

Alabama adheres to the common law principle that in the absence of statutory authorization an unincorporated association is not a legally recognized entity and may not be named a party defendant to an action against the association as such. Prior to the enactment of Section 143, Title 7, Code of Alabama, 1940, it was thus impossible in Alabama to sue an association. *Brotherhood v. Green*, 206 Ala. 196, 89 So. 435. That section, reading as follows, conferred a limited right to sue according to its terms:

> "Actions or suits may be maintained against and in the name of any unincorporated organization or association for any cause of action for or upon which the plaintiff therein *may maintain such an action against the members of such organization or association.*" (Italics ours.)

The statute significantly does not authorize unincorporated associations to be sued in any and every kind of action. Only a limited authority is granted in this respect. Under the statute a suit may be maintained against the Brotherhood *only* if petitioner "may maintain such an action against the members of (the Brotherhood)." In view of the limited authorization of the Alabama statute with regard to the maintenance of actions against unincorporated associations, it would seem that petitioner's complaint must on its face establish that it is an action within the scope of the statute, that is, such an action as would lie against *all* of the members of the Brotherhood. Although Section 143 does not contain the word "all," we doubt that a serious argument can be made that it authorizes an action against an association in its name when less than all its members may be liable on the claims made

by a plaintiff. Our research has not revealed an opinion in point by Alabama courts. There is, however, a line of decisions in New York under a fairly comparable statute of that state providing thus:

> "An action * * * may be maintained against the president or treasurer of an unincorporated association, to recover any property, or upon any cause of action, for which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of * * * their liability therefor, either jointly or severally." (Title 18 A, McKinney's Consolidated Laws of New York, Sec. 13.)

The New York statute authorizes suits against an association by instituting action against the designated officer rather than against the association in its accepted name. For our purposes, this distinction from the Alabama statute is unimportant. The New York statute has the other distinguishing feature in that it expressly requires the ability to maintain the action against "*all* the associates." We submit that although the word "all" does not appear in the Alabama statute, the intendment of both statutes is identical, to-wit, that *all* the members must be liable upon the claim pleaded as a condition to maintenance of the suit. The New York courts have uniformly held that in an action instituted under their statute the petition must specifically allege facts establishing that all the members of the association are liable to the plaintiff on the cause of action alleged. *McCabe v. Goodfellow*, 133 N. Y. 89, 30 N. E. 728; *Schouten v. Alpine*, 215 N. Y. 225, 109 N. E. 244; *People v. Brotherhood of Painters, etc.*, 218 N. Y. 115, 112 N. E. 752 and *Empire City Job Print, Inc. v. Harbord*, 265 N. Y. S. 451, 148 Misc. 231. We submit that the application of the Alabama statute should be and was intended to be that made of the similar statute in New York.

Our next step is hence the determination of the question whether the complaint herein reveals an alleged cause

of action against all the members of the Brotherhood or merely a cause of action against certain officers and members, if there is any cause of action at all. The agreement of February 18, 1941, referred to by petitioner, is between the southeastern railroads and the chairmen of general grievance committees on those railroads. By its express terms (Section 5, R. 12), it was not automatically effective on the Louisville & Nashville Railroad, the reservation having been made that the Brotherhood's general grievance committee on that railroad might at its option retain the rules and conditions presently pertaining on the property. An "agreement in connection with application on the Louisville & Nashville Railroad" of the February 18, 1941, agreement was consummated between the Brotherhood's general chairman on the railroad and the director of personnel on May 12, 1941 (R. 13). The agreement was therefore localized to this railroad property in so far as these proceedings are concerned. There is obviously no relationship between the negotiation of this contract with the Louisville & Nashville Railroad and the vast majority of members of the Brotherhood, scattered as they are throughout the United States and Canada. The operation of the contracts attached to the complaint is limited to the Louisville & Nashville Railroad and those contracts have no application or effect on the large number of other railroads elsewhere in this country and Canada. At the very most, the contract of February 18, 1941, may be regarded as being operative with respect to firemen employed on the twenty-one southeastern railroads which are signatory to it. Under such conditions it is difficult to conceive of petitioner's having a cause of action for such violation of his seniority rights as may have been occasioned by the contract of February 18, 1941, against the members of the Brotherhood generally. Patently no cause of action against members not employed on the Louisville & Nashville Railroad could be

developed from the agreement of May 12, 1941, which manifestly has reference to that carrier only.

According to established rules, even members employed on the southeastern railroads would not be liable to petitioner. It is well settled that members of a voluntary association functioning as a labor union are not responsible for damages caused by unlawful acts of the association or its officers unless they personally authorized or participated in the particular acts. Such was the holding of this Court in *United States v. White*, ... U. S. ...., 64 S. Ct. 1248 (June 12, 1944), in which was discussed the liability of the individual members of Local No. 542, International Union of Operating Engineers. The following quotation from the opinion reveals the decision of the Court:

> "At the same time, the members are not subject to either criminal or civil liability for the acts of the union or its officers as such unless it is shown that they personally authorized or participated in the particular acts. See *Lawlor v. Loewe*, 235 U. S. 522, 35 S. Ct. 170, 59 L. Ed. 341; *Eagle Glass & Mfg. Co. v. Rowe*, 245 U. S. 275, 38 S. Ct. 80, 62 L. Ed. 286."

The complaint is devoid of allegations that any member of the Brotherhood of Locomotive Firemen and Enginemen authorized or participated in the acts set forth therein. Neither does the complaint contain any allegations differentiating the Brotherhood from the International Union of Operating Engineers as respects this problem.

A decision permitting the maintenance of the instant suit against the Brotherhood would require a holding that each individual member of this or any other unincorporated association, selected as bargaining agent under the Railway Labor Act, or under the National Labor Relations Act, must be liable in damages for any misfeasance or malfeasance on the part of the officers or governing

body of the organization. We submit that membership in an unincorporated association does not bestow upon the association's officers such powers of agency as would enable the officers to render the individual members liable for the officers' misfeasance. As the record herein shows at most, the bargaining agent acted through certain local officers only in relation to Brotherhood members in the southeastern section of the United States. It would be drastic indeed to hold that, while acting for a limited section of Brotherhood membership, the officers could make individual members of the association in the remotest parts of the United States and Canada personally liable and subject to a suit for damages. In consequence it clearly appears that the complaint does not contain an alleged cause of action in behalf of petitioner running against all of the members of the Brotherhood or any of them. The requirements that must exist as a condition to maintenance of suit against the Brotherhood under the statute are not present herein. Accordingly, the ground for demurrer was well taken.

Before concluding this section of the brief we pause to observe one other ground of demurrer, non-federal in nature, to-wit, the absence of indispensable parties to the case. As heretofore shown in the statement of facts, the complaint was brought against the Railroad, the Brotherhood of Locomotive Firemen and Enginemen and three individuals who occupy offices in local lodges and are in the employ of the Railroad as engineers and firemen (R. 83, 84). Among other relief, petitioner seeks an injunction against the enforcement of and the making of any claims under the agreement of February 18, 1941. It is apparent, from a study of the complaint and its prayer, that numerous firemen and engineers who have acquired claims to certain assignments by reason of the agreements sought to be set aside, have not been made parties to the complaint although their rights and interests are sought to be determined.

These individuals are essential parties to prosecution of the suit. *McMurray v. Brotherhood of Railroad Trainmen*, 50 F. 2d 968 (D. C., W. D. Penn., 1931). The decrees of the Alabama courts are supportable on this non-federal ground of demurrer alone and this Court will not decide whether the Alabama courts were correct in their holding in the particular respect.

Summarizing this portion of the brief we submit we have demonstrated:

1. That, where a state court decides a case on non-federal grounds, and those grounds are sufficient to sustain the judgment, the Supreme Court will not review the case even though it may consider the position of the state court to be unsound.

2. That, under the Alabama Code, this action may be maintained against the Brotherhood only if it is established in the complaint that all members of the Brotherhood are liable to petitioner on the cause of action alleged. In this connection we have shown that neither the membership generally, nor even the members employed on the southeastern railroads, are personally liable for the misfeasance or malfeasance of the collective bargaining agent. Hence the conditions required by statute to be shown in order to support a suit against the Brotherhood are lacking.

3. That persons whose rights and interests are sought to be determined are not before the Court, this lack of indispensable parties defendant having been brought to the attention of the Alabama courts by demurrer which was severally and separately sustained.

4. That, inasmuch as the decree of the Alabama courts may be supported on the two non-federal grounds mentioned above, among others herein noted in this brief, this Court will not, under its decisions, review the case.

II.

Neither the Complaint in this case (R. 83 to 98, inclusive) nor the interpretation thereof contained in the decision of the Supreme Court of Alabama (R. 131 to 145, inclusive) presents a case where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution or any statute of the United States, and hence the action of the Supreme Court of Alabama is not subject to review by certiorari by this Court.

In the petition for writ of certiorari in this case, jurisdiction of this Court is invoked under "Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Section 347)." We do not understand this to be an apt citation, but assume that the petitioner invokes the power of this Court under Title 28, U. S. C. A., Section 344. (Certiorari to state courts of last resort.)

A classic statement on the often discussed question of when a case arises under the Constitution or laws of the United States is found in *Gully v. First National Bank*, 299 U. S. 109, by Mr. Justice Cardozo. In that case, it is said:

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. (Authorities omitted.) The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. (Authorities omitted.) A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto (authorities omitted), and the controversy must be disclosed upon the face of the complaint, unaided by the answer

or by the petition for removal. (Authorities omitted.) Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense. (Authorities omitted.)"

"* * * Partly under the influence of statutes disclosing a new legislative policy, partly under the influence of more liberal decisions, the probable course of the trial, the real substance of the controversy, has taken on a new significance. 'A suit to enforce a right which takes its origin in the laws of the United States, is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of such a law, upon the determination of which the result depends.' *Shulthis v. McDougal*, 225 U. S. 561, 569."

While the above case was one involving the right to remove a case from state to federal court, we are certain the fundamental test is the same where, as here, the cause of action must be shown to be one set up or claimed by either party under the Constitution or statutes of the United States.

In the petition for the writ of certiorari in this case, petitioner states: "The statute involved is the Railway Labor Act." No issue could be adjudicated by the Supreme Court of Alabama which was not tendered by the pleadings. Obviously, therefore, the complaint must be analyzed to determine whether a cause of action is set up under the Railway Labor Act as alleged in the petition for certiorari.

"The question whether a party claims a right under the Constitution or laws of the United States is to be ascertained by the legal construction of his own allegations."

Hughes, Federal Practice Jurisdiction and Procedure, Vol. 1, Section 543.

The allegations of the complaint show that petitioner is seeking to protect what he styles as his "seniority" rights and the "seniority" rights of others similarly situated. No other reason for the bringing of the suit is suggested.

The petitioner's seniority rights are based upon contract. In paragraph 4 of the complaint, he says:

> "He (petitioner) has been employed by the respondent railroad as a locomotive fireman since February 4, 1910 and has worked as such on the South and North Alabama Division since March 5, 1910, with seniority rights (Exhibit I below) from the latter date. He worked as a fireman in road passenger service on said Division from December 28, 1921, to February 8, 1941, when he was displaced by the wrongs of the railroad and the Brotherhood as set out below." (R. 85.)

In paragraph 5 of the complaint, he says:

> "Complainant was originally employed by the railroad and is still working for it under *an individual contract of hiring* between himself and the railroad. His contract has been modified from time to time by mutual agreement between plaintiff and the railroad, and presently embodies the terms of the collective bargaining 'Agreement Between The Louisville & Nashville Railroad And Its Locomotive Firemen and Hostlers' issued March 1, 1929 and incorporated in full herewith as Exhibit I attached hereto." (R. 86.) (Emphasis ours.)

(It is interesting to note that the agreement above referred to by petitioner as being the *contract* [R. 146 *et seq.*] on which is grounded his seniority rights, was a contract between this respondent Brotherhood and the carrier. For aught that appears to the contrary, the only seniority rights which petitioner has ever enjoyed since 1910 were those created by action of this Brotherhood, existing solely by reason of its contracts with the carrier, created by and subject to revision by its agency, both before and after the enactment of the Railway Labor Act.)

Again, in paragraph 15 of the complaint, petitioner describes the contract nature of the right here sought to be protected:

> "By virtue of the contracts which it had entered into with complainant and the other negro firemen, the railroad was under a duty to them to give preference of runs to the oldest fireman in road service when competent and worthy." (R. 89.)

And again, in paragraph 18 of the complaint, petitioner says:

> "In negotiating and executing said agreement and modification, the railroad, acting by and through its general officers who were then and there acting within the line and scope of their employment, did conspire and confederate with the Brotherhood to curtail the seniority rights and job assignments of complainant and the negro firemen in breach of existing *contracts* with the negro firemen, to the fraudulent advantage of the Brotherhood-member firemen." (R. 90.) (Emphasis ours.)

Succinctly stated, is it not accurate to say that the gravamen of this complaint is an alleged fraudulent interference with the contractual relation existing between petitioner and the railroad? The right which petitioner asserts is the right to have this contractual relationship remain undisturbed by the fraud or conspiracy of the Brotherhood and the railroad. If such a right exists now, it existed prior to the enactment of the Railway Labor Act and could have been then vindicated without reference to a federal statute, just as it can now be vindicated, if at all, without reference to a federal statute. Petitioner makes it manifest in his complaint that his rights are contractual and not statutory; he wholly fails to show, even by implication, that his right is one that will be supported if the Constitution or laws of the United States are given one construction or effect and defeated if they receive another.

Petitioner cannot, of course, by a mere general reference to the Railway Labor Act, or by anticipating that the respondents will attempt to justify any alleged interference with his contract rights by the provisions of the Railway Labor Act, make this a case where "*any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution or any treaty or statute of* • • • *the United States.*" The full array of authorities on this question may be found collected in annotation to *Campbell v. Chase National Bank* (71 F. 2d 669), 94 A. L. R. 708, commencing on page 711.

By Section 27 of his complaint, the petitioner tardily and clearly without substantial effect attempted to raise the question of the applicability of the Fifth Amendment to the Constitution of the United States. This attempt was not followed up in the petition for certiorari, and we assume could not be effectually followed up or called a substantial insistence because the language of the Fifth Amendment does not purport to govern the acts of individuals or private persons.

By the references to race and color contained in the petitioner's complaint and his reference to the universal custom of American railroads of promoting only white persons to be engineers (R. 89), it seems to be the petitioner's purpose to make a general appeal for the intervention of federal courts because of petitioner's race. As was said by Mr. Justice Brewer in the case of *Hodges v. United States*, 203 U. S. 1, 19:

> "One thing more: at the close of the Civil War, when the problem of the emancipated slaves was before the nation, it might have left them in a condition of alienage, or established them as wards of the government like the Indian tribes, and thus retained for the nation jurisdiction over them, or it might, as it did, give them citizenship. It chose the latter. By the Fourteenth Amendment it made citizens of all born within the limits of the United States and subject to

its jurisdiction. By the Fifteenth it prohibited any state from denying the right of suffrage on account of race, color or previous condition of servitude, and by the Thirteenth it forbade slavery or involuntary servitude anywhere within the limits of the land. Whether this was or was not the wiser way to deal with the great problem is not a matter for the courts to consider. It is for us to accept the decision, which declined to constitute them wards of the nation or leave them in a condition of alienage where they would be subject to the jurisdiction of Congress, but gave them citizenship, doubtless believing that thereby in the long run their best interests would be subserved, they taking their chances with other citizens in the states where they should make their homes.''

Recognizing that there is nothing in the Railway Labor Act on which he could base his right, the subject matter of this suit, the petitioner attempts to read into that Act provisions and effects which it does not contain and which were not given it by Congress. We refer to those portions of his complaint where he assumes that the Railway Labor Act requires the Brotherhood, acting as bargaining representative for the craft of firemen, to do certain acts of which there is no mention in the Railway Labor Act. For instance, in paragraph 11 of the complaint, he says:

> "It (the Brotherhood) has always refused and still refuses *to notify complainant* or the other negro firemen of proposed actions adversely affecting their interests, to give them a chance *to be heard or vote* on the same; has always refused and still refuses *to report* to them its actions as their statutory representative under the Railway Labor Act or to handle their just grievances wherever there is a conflict of interests between them and Brotherhood members, has persistently refused and still refuses to give them fair, honest and faithful representation under the Railway Labor Act." (R. 88.) (Emphasis ours.)

We submit that the Railway Labor Act wholly fails to require a bargaining representative to notify either

majority or minority members of the craft of proposed actions adversely affecting their interests or to give them a hearing or an opportunity to vote on the same or to report to them its actions. The petitioner cannot, by arbitrarily averring that the Railway Labor Act contains such requirements and then relying upon a breach thereof, thereby effectively *assert a right under a federal statute.* Such a statute does not exist. The mere averment that such a statute exists could not give the federal courts a jurisdiction which they would not possess in the absence of such unwarranted averment.

The general principles applicable to such averments may be found stated by this Court in the case of *Levering, etc. v. Morrin,* 289 U. S. 103, 105:

> "Whether an objection that a bill or a complaint fails to state a case under a federal statute raises a question of jurisdiction or of merits is to be determined by the application of a well settled rule. If the bill or the complaint sets forth a substantial claim, a case is presented within the federal jurisdiction, however the court, upon consideration, may decide as to the legal sufficiency of the facts alleged to support the claim. But jurisdiction, as distinguished from merits, is wanting where the claim set forth in the pleading is plainly unsubstantial. The cases have stated the rule in a variety of ways, but all to that effect. (Citations.) And the federal question averred may be plainly unsubstantial either because obviously without merit, or 'because its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy'."

We respectfully submit that here involved is nothing more than petitioner's seniority rights based on contract, the protection of which is entirely within the ambit of the state's judicial power and entirely unaffected by any federal statute or Constitutional provision.

III.

The decision of the Supreme Court of Alabama sustaining the demurrer to the original complaint here sought to be reviewed is grounded entirely and properly upon state law.

Let us consider each of the seven phases of the complaint as reflected in the seven prayers for specific relief.

First: An injunction of the nature sought cannot be awarded under Alabama law.

The primary purpose of the suit may fairly be said to be to obtain an injunction, thus described in *paragraphs 1 and 4* of the prayer of the complaint (R. 96 and 97):

> "1. He be granted a permanent injunction against each respondent and the persons they severally represent enjoining them and each of them from enforcing, making any claims under, or otherwise recognizing said Agreement and modification thereof.
>
> • • • • • •
>
> "4. A permanent injunction against respondent Brotherhood, its officers, subordinate lodges, members, agents, or attorneys, and the individual defendants perpetually enjoining them and each of them from purporting to act as representative of complainant or the other negro firemen on respondent railroad, under the Railroad Labor Act, so long as it or any of them refuses to give them notice, and an opportunity to be heard and to vote on proposals adversely affecting their interests, to make prompt and full disclosure of all actions taken by it or any of them affecting their interests in any way, and so long as it discriminated against any of them in favor of itself or any Brotherhood-member fireman."

If a writ of injunction, containing the mandates sought in these prayers, were awarded, the effect would be, insofar as *Prayer 1* is concerned, to put the parties back under the provisions of the agreement of March 1, 1929 (R. 146, *et seq.*). In effect, this would be an injunction in

aid of the specific performance or the making effective of the agreement of 1929. That agreement, under Alabama law, is not capable of being made the subject matter of a decree for specific performance. The petitioner does not, of course, seek to re-establish this contract and obtain specific performance thereof directly, but indirectly he does. Alabama courts will not award such relief. *Roquemore, etc. v. Mitchell,* 167 Ala. 475; 52 So. 423, 140 Am. St. 52 and Note.

The mandate sought in *paragraph 4* of the prayer would be completely incapable of enforcement. It would probably make necessary many hearings before the Court to determine whether or not the Brotherhood was "discriminating" against petitioner or those similarly situated and whether or not the Brotherhood had given sufficient "notice" to the petitioner and others similarly situated; the matter has no end so far as time for performance is concerned. A single decree of the Court could not be devised which would dispose of the matter. Alabama's courts have expressly declined to award injunctions of this kind.

> "The second decree above suggested would also be impracticable, not only for the reason that the court cannot compel the performance of the personal services assumed to be undertaken by the complainant, involving, as they do, the exercise of special skill, judgment and discretion, but it would be out of the question for the chancery court *to keep this case open for all time, or even for an indefinite term of years, to superintend the continuous performance of these duties by the complainant.* This might invite the frequent necessity on the part of the court of hearing complaints from the defendant charging the complainant with a breach of its duties, or from the complainant arraigning the defendant for contempt, for a violation of the injunction. There would thus be no end to the number of occasions *when the court might be called on from year to year to say whether the complainant has per-*

formed the duties in question faithfully and efficiently, so as to have kept the injunction in force; or negligently and unskillfully, so as to justify its breach. For these reasons the rule is that equity will not enforce the performance of continuous duties involving personal labor and care of a particular kind, which the court cannot superintend." (Emphasis ours.) *Iron Age Pub. Co. v. Western Union Tel. Co.*, 83 Ala. 498, 3 So. 449.

Second: Alabama retains the distinction between suits at law and suits in equity.

Bona fide suits for discovery are, under the Alabama practice, equity suits, but where the prayer for discovery is merely a subterfuge for converting what otherwise would be an action at law into an action in equity, or is merely gratuitously thrown in to provide a basis for equitable jurisdiction, the Alabama courts prescribe rather strict standards. It must appear not only that the facts sought are known to the respondent and are unknown to the complainant and that they are unascertainable from any other source, but that they cannot be proved otherwise than by the use of a bill for discovery.

Alabama has very liberal rules for the use of interrogatories to the adversary party in suits both at law and in equity. These interrogatories must be answered within sixty days, affording ample discovery prior to trial. Alabama Code 1940, Title 7, Sections 477-486.

Alabama has very liberal statutes for use in suits at law and in equity requiring the production of documents and original instruments. Alabama Code 1940, Title 7, Sections 487-490. No litigant at law in Alabama is hampered by a lack of procedural remedies for securing any information whatever in the possession of his adversary relative to the issue.

The insertion of paragraphs 24 and 25 in the complaint (R. 94) and *paragraph 3* in the prayer (R. 96) was palpably for the purpose of offering an equitable subject matter,

if others failed, thus converting what otherwise would be a suit at law into a suit in equity. The Supreme Court of Alabama is authorized to decide whether or not these averments are sufficient. The rather rigid requirements of the Alabama rule have been briefly stated and the cases in support thereof cited in the case of *Cleveland Storage Co. v. Guardian Trust Co.*, 222 Ala. 210, 131 So. 634, where the following statement appears:

> "It is therefore no more than an effort to obtain a discovery in aid of a purely legal demand or claim. *In order to give equity to such a bill*, it is necessary to show that complainant does not know some of the facts essential to support an action at law, and/or has no legal means of ascertaining or proving them except by an answer of respondent; that is, in effect, that such facts are peculiarly known to respondent, and cannot be otherwise proven." (Emphasis ours.)

The information mentioned in paragraphs 24 and 25 of the complaint may not be within the knowledge of the petitioner but, like innumerable other facts, *can be proved* by the subpoenaing of the appropriate witnesses and can be ascertained in advance of trial, if desired, by propounding interrogatories and motions to produce records.

Since the draftsman of the complaint merely *mentions* the information he wishes in a discursive way, and does not frame the questions to which he desires answers, the Alabama court properly disregarded the averments. Clearly, these recitals were made, not to seek information, but to bolster jurisdiction. They are recitals, not questions.

Third: Can the case be held in equity because of the request for a declaratory judgment?

The petition for a declaratory judgment in Alabama must be brought in a law forum when it seeks to interpret legal rights and in an equity forum when it seeks to determine equitable rights.

The Alabama Supreme Court, after analyzing Alabama's Declaratory Judgment Act, said:

> "But we do not construe this language to mean that the Declaratory Judgment Act had the effect to obliterate the distinction between proceedings in equity and actions at law in giving coercive relief." *Berman v. Wreck-A-Pair Co.*, 236 Ala. 301, 182 So. 54.

The court, in the same case, quoted the first section of the Declaratory Judgment Act as it appears in the Code of 1940 (Title 7, Section 156) and italicized certain words therein as shown below:

> "Courts of record *within their respective jurisdictions* shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

The rights sought to be vindicated in this suit, as elsewhere in this brief argued, are legal rights. Wrongful interference with contractual rights is the gist of the suit. The Alabama court has clearly said that the case will not be converted into an equitable proceeding by claiming a declaration of legal rights under the 1935 statute.

In addition to the case just quoted from, two other like holdings appear in recent decisions of Alabama's Supreme Court:

> *Tuscaloosa Co. v. Shamblin*, 233 Ala. 6, 169 So. 234;
> *Teal v. Mixon*, 233 Ala. 23, 169 So. 477.

Fourth: The claim for damages, *paragraphs 6 and 7* of prayer (R. 97), is the main relief prayed, and a suit for damages cannot be maintained in equity in Alabama and a jury trial denied unless on the theory of affording complete

relief in a matter in which equity has jurisdiction on some other ground.

Suits for damages for unlawful invasion of contract rights, as suits for damages for any other cause, must be brought in the law courts of Alabama. Illustrative of this are the following:

Shaup v. Grand International Brotherhood of Locomotive Engineers, 223 Ala. 202, 135 So. 337;

U. S. Fidelity, etc. Co. v. Millonas, 206 Ala. 147, 89 So. 732; 29 A. L. R. 520.

We have adverted to each of the seven prayers for specific relief found in the complaint.

In conclusion, therefore, we submit that there is no issue tendered by the complaint, as reflected in either prayer for relief, on which relief can be granted by an Alabama court of equity, such as that in which this proceeding was instituted. The Supreme Court of Alabama, applying its own decisions and precedents, affirmed the lower court, which sustained the demurrer to the complaint. It could not have done otherwise. No federal statutory or Constitutional issue was involved in these considerations.

There is, therefore, no occasion for the Supreme Court of the United States to review this decision. If this Court should send this case back to the Supreme Court of Alabama, it could instruct that Court to overrule the demurrer to the complaint only by overriding the clearly enunciated domestic precedents of that Court.

IV.

Petitioner should exhaust his remedies under the administrative provisions of the Railway Labor Act before resorting to the courts for relief through the injunctive process.

For the purpose of discussing this proposition, we will assume, arguendo, that the Railway Labor Act is subject to the construction that a bargaining representative must give notice to craft members of proposed actions, permit an opportunity on their part to express their views by voting and report bargaining results, all as repeatedly alleged in the complaint. Even under this assumption, however, petitioner is immediately confronted with the question of how these rights allegedly created by the Railway Labor Act may be enforced.

Petitioner states his case thus:

> "Petitioner is * * * seeking * * * protection of his rights as fireman and he declines to permit the issue to be turned from the point." (Brief supporting petition for certiorari, page 15.)

May he seek that protection in the form of an injunction at the hands of the courts?

In his complaint—paragraph 23—(R. 98), petitioner says that he and "the negro firemen have exhausted their remedies within the structure of the railroad and the Brotherhood," but he fails to say that he has exhausted his remedies or even sought relief under the administrative machinery of the Railway Labor Act or that such an attempt would be in vain, and he fails to aver that his "right" is one which Congress has brought forward from the realm of conciliation, mediation and arbitration into the realm either of administrative or judicial remedy.

What is the remedy which he seeks here to assert? Isn't it fair to say that it is the right to have reviewed by a judicial body the quality of representation accorded him

by his bargaining representative? He asserts that this representation is faithless and fraudulent. To determine that charge some court must say that the representative did not conclude for him a bargain representing what, in good faith, seemed a proper resolution of the clashing interests of each group of firemen, white and colored, the carriers and the public.

The complaint says—paragraph 13:

> "According to existing railroad practice in the United States, locomotive engineers are obtained by promotion of selected white locomotive firemen. By traditional and universal railroad practice in the United States negro firemen arbitrarily are never promoted to engineers. * * *." (R. 89.)

Petitioner's seniority rights originated through bargaining procedures of this Brotherhood and were for many years dependent entirely upon its efforts and contracts; as legislation entered the field in 1920, in 1926 and 1934 it has never been questioned that seniority rights still could be changed, altered or adjusted by collective bargaining contracts between the craft and the carrier.

Is the petitioner entitled to have the collective bargaining contracts of February 18, 1941, and March 15, 1941, judicially investigated by a court and adjudicated as to their wisdom, their good faith and fair dealing under all influencing factors?

Is he entitled to an injunction against the Brotherhood, its officers, etc.:

> "* * * perpetually enjoining them and each of them from purporting to act as representatives of complainant or the other negro firemen on respondent railroad under the Railway Labor Act, *so long as it or any of them refuses to give them notice and an opportunity to be heard and to vote on proposals adversely affecting their interests, to make prompt and full disclosure of all actions taken by it or any of them affecting their interests in any way,* and so long as it discriminated

against any of them in favor of itself or any Brotherhood-member fireman."—*paragraph 4* of prayer of complaint. (R. 96 and 97.) (Italics ours.)

Must a court of equity of Alabama by injunctive process seat itself as a permanent monitor over the conduct of a bargaining representative, empowered by the Railway Labor Act?

In paragraphs 20 to 23, inclusive, of the complaint, petitioner sets forth in specific terms a private complaint or, in labor terms, a typical "grievance," on account of being displaced by a fireman junior in service to himself.

The petitioner's complaint—paragraph 26—(R. 95) alleges:

> "An actual claim or controversy exists between complainant and the negro firemen as a class on one side and the railroad, the Brotherhood and the Brotherhood-member firemen on the other * * *."

In paragraph 2 of the complaint (R. 84), petitioner recites that:

"He brings this suit:

> "(1) in his individual capacity for wrongs inflicted on his individual rights, and
>
> "(2) as representative of all the negro firemen * * * employed by respondent railroad."

If this controversy is viewed as a grievance on the part of *petitioner or the group of employees* for whom petitioner assumes to sue, then it would seem the Railway Labor Act (Title 45 U. S. C. A., Section 153 First [i]) affords an ample forum (National Railroad Adjustment Board) with enforceable decisions (Sec. 153, First [p]).

The statute reads:

> "The disputes between an employee or group of employees and a carrier or carriers *growing out of grievances* or out of the interpretation or application of agreements concerning rates of pay, rules, or work-

ing conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Italics ours.)

If the controversy, on the other hand, be viewed as a demand by the *negro firemen as a class* for recognition as a separate "class" for bargaining purposes then it would seem the Railway Labor Act (Title 45, U. S. C. A., Sec. 152, Ninth) affords an ample forum (National Mediation Board) to right any wrong with respect to representation. This Board could determine the propriety of the "class" sought to be set up—determine who could vote therein, etc.

This section reads in part:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. * * * In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days desig-

nate the employees who may participate in the election. * * *"

In the light of these two provisions of the Railway Labor Act, one wonders why a litigant, actually and in reality seeking relief, would exhaust his remedies "within the structure of the railroad and the Brotherhood" and would not turn to these obvious avenues through which to obtain redress.

As we understand the recent decisions of this Court, the question here raised is not justiciable in character and certainly cannot be made the subject matter of a suit for an injunction. If the particular "right" sought to be vindicated has a forum other than "conciliation, mediation and arbitration," it is provided in the sections of the Railway Labor Act above quoted. *Brotherhood of Railroad Trainmen, etc. v. Toledo, P. & W. R. R.*, 321 U. S. 50.

In the last cited case, a carrier subject to the Railway Labor Act sought to secure an injunction against violence to its properties and interference with interstate commerce during a strike and made out such an appealing case that the lower court awarded the writ and the Circuit Court of Appeals affirmed (132 F. 2d 265).

This Court denied the relief, however, and turned the carrier away because it had not submitted to voluntary arbitration, one of the means for averting strife provided by the Railway Labor Act. It had embraced mediation and conciliation but had refused arbitration and thereby forfeited its right to resort to the courts for an injunction.

For the entire Court, Mr. Justice Rutledge said in the *T. P. & W.* case:

> "The policy of the Railway Labor Act was to encourage use of the nonjudicial processes of negotiation, mediation and arbitration for the adjustment of labor disputes. * * * The over-all policy of the Norris-LaGuardia Act was the same. The latter did not entirely abolish judicial power to impose previous restraint in

labor controversies. But its prime purpose was to restrict the federal equity power in such matters within greatly narrower limits than it had come to occupy. It sought to make injunction a last line of defense, available not only after other legally required methods, but after all reasonable methods as well, have been tried and found wanting. This purpose runs throughout the Act's provisions. It is dominant and explicit in Section 8. In short, the intent evidenced both by words and by policy was to gear the section's requirements squarely into the methods and procedures prescribed by the Railway Labor Act."

If the *carrier* must first resort to all of the remedial and curative provisions of the Railway Labor Act, before resorting to injunctive process, should not the petitioner, who says he is proceeding under the same Act? We are not unmindful of this Court's expression on the right to resort to court found in *Moore v. Illinois Central R. R. Co.*, 312 U. S. 630. Mr. Justice Black was there speaking of the right to resort to courts to enforce a legal right, not to obtain the equitable and to some extent discretionary remedy of injunction as here sought, to interfere with the normal processes of collective bargaining. The injunction here sought would be a clear use of that judicial remedy in a "labor controversy" as that term seems to be used in *Brotherhood of Railroad Trainmen v. Toledo, etc., supra.*

V.

Supervision or review of the conduct of collective bargaining representatives acting under the Railway Labor Act is not a function of the courts.

We submit that the courts ought not to be called upon to adjudicate the questions raised in petitioner's complaint, just as this Court held they should not be called upon to adjudicate the series of questions raised in the group of three cases decided November 22, 1943, as follows:

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for Missouri-Kansas-Texas Railroad v. Missouri-Kansas-Texas Railroad Co., et al., 320 U. S. 323;

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Co. v. Southern Pacific Co., et al., 320 U. S. 338;

Switchmen's Union of North America, et al., v. National Mediation Board, et al., 320 U. S. 297.

In the first of these cases, the firemen's organization and the engineers' organization engaged in a controversy concerning representation of certain employees of the carrier, and this Court, almost as if speaking of the case at bar, in its opinion, said:

"But, it is apparent on the face of the Act that while Congress dealt with this subject comprehensively, it left the solution of only some of those problems to the courts or to administrative agencies. It entrusted large segments of this field to the voluntary processes of conciliation, mediation, and arbitration. Thus by § 5, First, Congress provided that either party to a dispute might invoke the services of the Mediation Board in a 'dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference' and any other 'dispute not referable' to the Adjustment Board and 'not adjusted in conference between the parties or where conferences are refused.' Beyond the mediation machinery furnished by the Board lies arbitration. § 5, First and Third, § 7. In case both fail there is the Emergency Board which may be established by the President under § 10. In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress

utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (320 U. S. 332.)

In another of this group of cases, *General Committee, etc. v. Southern Pacific Co., supra,* this Court again declined to recognize as a justiciable issue a controversy raging between groups of employees subject to the Railway Labor Act. The prevailing opinion characterized the dispute as a jurisdictional one. It was, nevertheless, a case in which this Court turned back from that great mass of litigation which would result if dissatisfied individuals or dissatisfied minorities could take their contentions to the judicial forum. The Court, in refusing judicial process for the settlement of controversies of this kind, said:

"• • • From these various materials, each seeks to prove that Congress has fashioned a federal rule (enforcible in the courts) concerning the authority of collective bargaining agents to represent various classes of employees on their individual grievances. All of these would be relevant data for construction of the Act if the courts had been entrusted with the task of resolving this type of controversy. But we do not think they were." (320 U. S. 342.)

In the last of this group of cases, known as the "Switchmen's Union case," the Court has very clearly and definitely delineated the field of judicial review in controversies under the Railway Labor Act. Here the Court has said:

"As is indicated at some length in *General Committee of Adjustment. v. Missouri-Kansas-Texas R.*

Co., post, p. 323, the emergence of railway labor problems from the field of conciliation and mediation into that of legally enforcible rights has been quite recent. Until the 1926 Act the legal sanctions of the various acts had been few. The emphasis of the legislation had been on conciliation and mediation; the sanctions were publicity and public opinion. Since 1926 there has been an increasing number of legally enforcible commands incorporated into the Act. And Congress has utilized administrative machinery more freely in the settlement of disputes. But large areas of the field still remain in the realm of conciliation, mediation, and arbitration. On only a few phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. We need not recapitulate that history here. Nor need we reiterate what we have said in the *Missouri-Kansas-Texas R. Co.* case beyond our conclusion that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (320 U. S. 301, 302.)

This Court has very clearly said the hands of the courts should not be laid on the machinery for settling disputes set up by the Railway Labor Act:

> "For neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature." *Moore v. Illinois Central Railroad Co.*, 312 U. S. 630, at 635.

And petitioner says, notwithstanding the above expressions of this Court, that the *Railway Labor Act* is the statute under which he brings this suit.

VI.

The relationship of a bargaining representative under the Railway Labor Act to a member of the class or craft bargained for is sui generis and cannot be subjected to the rules of law applicable to ordinary agencies or trusteeships.

The complaint, apparently to meet the decision in *Teague v. Brotherhood of Locomotive Firemen and Enginemen*, 6 Cir., 127 F. 2d 53, which may be fairly called a companion case to this, proceeds on the theory that the respondent Brotherhood, upon being designated petitioner's bargaining representative, became petitioner's agent, under the obligation to exercise the very high degree of good faith imposed upon ordinary fiduciaries. It proceeds upon the theory, judging by the Alabama authorities cited in his brief in support of the petition for a writ of certiorari, that the negotiation of the 1941 amendments to the 1929 contract between the Railroad Company and the craft of firemen may, in effect, be tested by that very high standard prevailing between trustee and *cestui que trust* and in similar relationships, and if it falls short of this standard it is, in effect, a fraud by the Brotherhood upon the rights of petitioner.

The three companion cases decided by this Court on November 22, 1943, heretofore cited, seem to recognize the fact that the Railway Labor Act has given rise to a set of relationships somewhat new to the law and only in limited measure capable of juridical treatment and then only in those cases expressly declared so to be by Congress.

The complexity of affairs which would arise if the laws of agency were applicable to the relationship between petitioner and respondent Brotherhood in the sense that the laws of agency are applicable in the Alabama cases cited by petitioner, viz: *Brasher v. First National Bank*, 232 Ala. 340, 168 So. 42; *Rogers v. Brightman*, 189 Ala. 228, 66 So. 71, would, by its mere statement, prevent any

responsible person or organization from accepting the duty of bargaining agent.

If every dissatisfied member or group of members of the craft being bargained for could maintain an action in a state court for breach of duty as against a fiduciary, results would follow which were entirely unanticipated when Congress passed the Railway Labor Act and the National Labor Relations Act.

1. Every collective bargaining agreement would be subject to review by a court and jury in a damage suit by a disgruntled member of the craft affected, claiming that his rights were sacrificed unjustly to the interests of others.

2. It would give rise to a situation where only financially irresponsible organizations would accept designations as bargaining agents.

3. It would involve a most extensive investigation to determine whether the contract complained of was in fact legally harmful to complainant's interests, which inquiry would involve the negotiations leading up to it, the economic pressures involved, the public policy involved, and the element of human judgment involved. This would constitute a judicial review of collective bargaining, something so far unknown. Even administrative review of collective bargaining is so far unknown.

4. To hold that the rights arising under collective bargaining relationships can be made the subject matter of suits for damages such as this would intimidate bargaining representatives in the discharge of their duties, and introduce an entirely new element into consideration in their activities.

5. It would be a legal anomaly to allow a state court to enjoin a bargaining agency from representing a craft if such state court were of the opinion that the agent was acting in bad faith, in view of the drastic curtailment of

the injunctive process by the Norris-LaGuardia Act. Interminable delay in carrying out collective bargaining contemplated by the Railway Labor Act and the National Labor Relations Act would result.

6. The respondent Brotherhood has, in fact, been a collective bargaining agency for firemen on this Railroad for many years, both before and after the passage of the Railway Labor Act. Before the passage of the Act, the petitioner would have had no cause of action against the Brotherhood for the matters now complained of. The Act itself gives rise to no such causes of action by any provision cited therein. It is, therefore, reasonable to assume that the Court's statement in the three companion cases decided November 22, 1943, on this subject, that certain relationships are not subject to judicial consideration, applies to the cause of action here attempted to be set up.

7. It should not be forgotten that individuals or minority groups dissatisfied with the result of collective bargaining conducted for their craft by representatives elected by the majority have the right to avail themselves of the grievance machinery provided by the Railway Labor Act.

8. The Railway Labor Act was not passed to regulate working conditions, but only to prevent disputes. Its program for preventing disputes was to give effect to the will of the majority in a craft. This policy necessarily sometimes involves the overriding of the views of the minority.

9. The provision guaranteeing an open shop contained in the Railway Labor Act indicates that Congress contemplated that the bargaining representative would, in all probability, be acting for persons other than members of a union which might have been designated as bargaining agent.

The most recent case decided by this Court touching this question is *Brotherhood of Railway and Steamship*

Clerks, etc. v. United Transport Service Employees, etc., 320 U. S. 715. This case was decided without an exposition of the Court's views but with a reference to the three cases decided November 22, 1943. The facts of the case (137 F. 2d 817) are almost identical with the facts recited in the complaint at bar.

We respectfully urge that if the minority group of negro "red caps" were not entitled to take their grievances to court in the case above cited, there is no stronger reason for the minority in this case to call on a court to supervise, either by damage suit, injunctive process or otherwise, the functioning of this bargaining representative. Fundamentally, the position of the negro "red caps" and that of the petitioner herein is the same. We venture to suggest to the Court that to apply the rules of agency as recognized at common law to the relationship between the spokesmen for the Brotherhood and the 90,000 members of the Brotherhood with respect to the conduct of a collective bargaining conference with a carrier is impractical and impossible. No method of consultations or instructions exists.

A closer analogy is that of a representative under a republican form of government. The bargaining representative is, in a sense, elected or chosen like a representative in the government and, no doubt, could be removed in the case of fraud, but certainly members of the organization generally would not be responsible for the unfaithful conduct of the person or persons who might be chargeable with any fraudulent conduct. There is no more justiciability involved in a suit by the members of a craft against their bargaining representative than would be the case of citizens against a representative in the government. In effect, the representative accepts office, and the legal relationship of principal and agent does not exist.

CONCLUSION.

For the reasons stated herein, we submit that the decree dismissing the complaint should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 45.—October Term, 1944.

Bester William Steele, Petitioner,
vs.
Louisville & Nashville Railroad Company, Brotherhood of Locomotive Firemen and Enginemen, et al.

On Writ of Certiorari to the Supreme Court of the State of Alabama.

[December 18, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The question is whether the Railway Labor Act, 48 Stat. 1185, 45 U. S. C. §§ 151 *et seq.*, imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination because of their race, and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation.

The issue is raised by demurrer to the substituted amended bill of complaint filed by petitioner, a locomotive fireman, in a suit brought in the Alabama Circuit Court against his employer, the Louisville & Nashville Railroad Company, the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated labor organization, and certain individuals representing the Brotherhood. The Circuit Court sustained the demurrer, and the Supreme Court of Alabama affirmed. 245 Ala. 113, 16 So. 2d 416. We granted certiorari, 322 U. S. 722, the question presented being one of importance in the administration of the Railway Labor Act.

The allegations of the bill of complaint, so far as now material, are as follows: Petitioner, a Negro, is a locomotive fireman in the employ of respondent railroad, suing on his own behalf and that of his fellow employees who, like petitioner, are Negro firemen employed by the Railroad. Respondent Brotherhood, a labor organization, is, as provided under § 2, Fourth of the Railway Labor Act, the exclusive bargaining representative of the craft of firemen employed by the Railroad and is recognized as such by it and the

members of the craft. The majority of the firemen employed by the Railroad are white and are members of the Brotherhood, but a substantial minority are Negroes who, by the constitution and ritual of the Brotherhood, are excluded from its membership. As the membership of the Brotherhood constitutes a majority of all firemen employed on respondent Railroad, and as under § 2, Fourth the members because they are the majority have the right to choose and have chosen the Brotherhood to represent the craft, petitioner and other Negro firemen on the road have been required to accept the Brotherhood as their representative for the purposes of the Act.

On March 28, 1940, the Brotherhood, purporting to act as representative of the entire craft of firemen, without informing the Negro firemen or giving them opportunity to be heard, served a notice on respondent Railroad and on twenty other railroads operating principally in the southeastern part of the United States. The notice announced the Brotherhood's desire to amend the existing collective bargaining agreement in such manner as ultimately to exclude all Negro firemen from the service. By established practice on the several railroads so notified only white firemen can be promoted to serve as engineers, and the notice proposed that only "promotable", i. e. white, men should be employed as firemen or assigned to new runs or jobs or permanent vacancies in established runs or jobs.

On February 18, 1941, the railroads and the Brotherhood, as representative of the craft, entered into a new agreement which provided that not more than 50% of the firemen in each class of service in each seniority district of a carrier should be Negroes; that until such percentage should be reached all new runs and all vacancies should be filled by white men; and that the agreement did not sanction the employment of Negroes in any seniority district in which they were not working. The agreement reserved the right of the Brotherhood to negotiate for further restrictions on the employment of Negro firemen on the individual railroads. On May 12, 1941, the Brotherhood entered into a supplemental agreement with respondent Railroad further controlling the seniority rights of Negro firemen and restricting their employment. The Negro firemen were not given notice or opportunity to be heard with respect to either of these agreements, which were put into effect before their existence was disclosed to the Negro firemen.

Until April 8, 1941, petitioner was in a "passenger pool", to which one white and five Negro firemen were assigned. These jobs were highly desirable in point of wages, hours and other considerations. Petitioner had performed and was performing his work satisfactorily. Following a reduction in the mileage covered by the pool, all jobs in the pool were, about April 1, 1941, declared vacant. The Brotherhood and the Railroad, acting under the agreement, disqualified all the Negro firemen and replaced them with four white men, members of the Brotherhood, all junior in seniority to petitioner and no more competent or worthy. As a consequence petitioner was deprived of employment for sixteen days and then was assigned to more arduous, longer, and less remunerative work in local freight service. In conformity to the agreement, he was later replaced by a Brotherhood member junior to him, and assigned work on a switch engine, which was still harder and less remunerative, until January 3, 1942. On that date, after the bill of complaint in the present suit had been filed, he was reassigned to passenger service.

Protests and appeals of petitioner and his fellow Negro firemen, addressed to the Railroad and the Brotherhood, in an effort to secure relief and redress, have been ignored. Respondents have expressed their intention to enforce the agreement of February 18, 1941 and its subsequent modifications. The Brotherhood has acted and asserts the right to act as exclusive bargaining representative of the firemen's craft. It is alleged that in that capacity it is under an obligation and duty imposed by the Act to represent the Negro firemen impartially and in good faith; but instead, in its advice to and contracts with the railroads, it has been hostile and disloyal to the Negro firemen, has deliberately discriminated against them, and has sought to deprive them of their seniority rights and to drive them out of employment in their craft, all in order to create a monopoly of employment for Brotherhood members.

The bill of complaint asks for discovery of the manner in which the agreements have been applied and in other respects; for an injunction against enforcement of the agreements made between the Railroad and the Brotherhood; for an injunction against the Brotherhood and its agents from purporting to act as representative of petitioner and others similarly situated under the Railway Labor Act, so long as the discrimination continues, and so long as

it refuses to give them notice and hearing with respect to proposals affecting their interests; for a declaratory judgment as to their rights; and for an award of damages against the Brotherhood for its wrongful conduct.

The Supreme Court of Alabama took jurisdiction of the cause but held on the merits that petitioner's complaint stated no cause of action.[1] It pointed out that the Act places a mandatory duty on the Railroad to treat with the Brotherhood as the exclusive representative of the employees in a craft, imposes heavy criminal penalties for willful failure to comply with its command, and provides that the majority of any craft shall have the right to determine who shall be the representative of the class for collective bargaining with the employer, see *Virginian Railway Co.* v. *System Federation*, 300 U. S. 515, 545. It thought that the Brotherhood was empowered by the statute to enter into the agreement of February 18, 1941, and that by virtue of the statute the Brotherhood has power by agreement with the Railroad both to create the seniority rights of petitioner and his fellow Negro employees and to destroy them. It construed the statute, not as creating the relationship of principal and agent between the members of the craft and the Brotherhood, but as conferring on the Brotherhood plenary authority to treat with the Railroad and enter into contracts fixing rates of pay and working conditions for the craft as a whole without any legal obligation or duty to protect the rights of minorities from discrimination or unfair treatment, however gross. Consequently it held that neither the Brotherhood nor the Railroad violated any rights of petitioner or his fellow Negro employees by negotiating the contracts discriminating against them.

If, as the state court has held, the Act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty toward its members, constitu-

[1] The respondents urge that the Circuit Court sustained their demurrers on the ground that the suit could not be maintained against the Brotherhood, an unincorporated association, since by Alabama statute such an association cannot be sued unless the action lies against all its members individually, and on several other state-law grounds. They argue accordingly that the judgment of affirmance of the state Supreme Court may be rested on an adequate non-federal ground. As that court specifically rested its decision on the sole ground that the Railway Labor Act places no duty upon the Brotherhood to protect petitioner and other Negro firemen from the alleged discriminatory treatment, the judgment rests wholly on a federal ground, to which we confine our review. Grayson v. Harris, 267 U. S. 352, 358; International Steel Co. v. National Surety Co., 297 U. S. 657, 666; Indiana *ex rel.* Anderson v. Brand, 303 U. S. 95, 98, 99 and cases cited.

tional questions arise. For the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights. If the Railway Labor Act purports to impose on petitioner and the other Negro members of the craft the legal duty to comply with the terms of a contract whereby the representative has discriminatorily restricted their employment for the benefit and advantage of the Brotherhood's own members, we must decide the constitutional questions which petitioner raises in his pleading.

But we think that Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority. Since petitioner and the other Negro members of the craft are not members of the Brotherhood or eligible for membership, the authority to act for them is derived not from their action or consent but wholly from the command of the Act. Section 2, Fourth provides: "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act . . . .". Under §§ 2, Sixth and Seventh, when the representative bargains for a change of working conditions, the latter section specifies that they are the working conditions of employees "as a class". Section 1, Sixth of the Act defines "representative" as meaning "Any person or . . . labor union . . . designated either by a carrier or a group of carriers or by its or their employees to act for it or them". The use of the word "representative", as thus defined and in all the contexts in which it is found, plainly implies that the representative is to act on behalf of all the employees which, by virtue of the statute, it undertakes to represent.

By the terms of the Act, § 2, Fourth, the employees are permitted to act "through" their representative, and it represents them "for the purposes of" the Act. Sections 2, Third, Fourth, Ninth. The purposes of the Act declared by § 2 are the avoidance of "any

interruption to commerce or to the operation of any carrier engaged therein," and this aim is sought to be achieved by encouraging "the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions." Compare *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 569. These purposes would hardly be attained if a substantial minority of the craft were denied the right to have their interests considered at the conference table and if the final result of the bargaining process were to be the sacrifice of the interests of the minority by the action of a representative chosen by the majority. The only recourse of the minority would be to strike, with the attendant interruption of commerce, which the Act seeks to avoid.

Section 2, Second, requiring carriers to bargain with the representative so chosen, operates to exclude any other from representing a craft. *Virginian Railway Co.* v. *System Federation, supra*, 545. The minority members of a craft are thus deprived by the statute of the right, which they would otherwise possess, to choose a representative of their own, and its members cannot bargain individually on behalf of themselves as to matters which are properly the subject of collective bargaining. *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U. S. 342, and see under the like provisions of the National Labor Relations Act *J. I. Case Co.* v. *Labor Board*, 321 U. S. 332, and *Medo Photo Supply Corp.* v. *Labor Board*, 321 U. S. 678.

The labor organization chosen to be the representative of the craft or class of employees is thus chosen to represent all of its members, regardless of their union affiliations or want of them. As we have pointed out with respect to the like provision of the National Labor Relations Act in *J. I. Case Co.* v. *Labor Board, supra*, 338, "The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements by employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit, . . ." The purpose of providing for a representative is to secure those benefits for those who are represented and not to deprive them or any of them of the benefits of collective bargaining for the advantage of the representative or those members of the craft who selected it.

As the National Mediation Board said in In The Matter of Representation of Employees of the St. Paul Union Depot Company, Case No. R 635; "Once a craft or class has designated its representative, such representative is responsible under the law to act for all employees within the craft or class, those who are not members of the represented organization, as well as those who are members."[2]

Unless the labor union representing a craft owes some duty to represent non-union members of the craft, at least to the extent of not discriminating against them as such in the contracts which it makes as their representative, the minority would be left with no means of protecting their interests or, indeed, their right to earn a livelihood by pursuing the occupation in which they are employed. While the majority of the craft chooses the bargaining representative, when chosen it represents, as the Act by its terms makes plain, the craft or class, and not the majority. The fair interpretation of the statutory language is that the organization chosen to represent a craft is to represent all its members, the majority as well as the minority, and it is to act for and not against those whom it represents.[3] It is a principle of general application that the exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf, and that such a grant of power will not

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[2] The Mediation Board's decision in this case was set aside in Brotherhood of Railway & Steamship Clerks v. United Transport Service Employees, 137 F. 2d 817, reversed on jurisdictional grounds 320 U. S. 715. The Court of Appeals was of the opinion that a representative is not only required to act in behalf of all the employees in a bargaining unit, but that a labor organization which excludes a minority of a craft from its membership has no standing to act as such representative of the minority.

The Act has been similarly interpreted by the Emergency Board referred to in General Committee v. Southern Pacific Co., 320 U. S. 338, 340, 342-343 n. It declared in 1937: "When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier all members of the craft or class share in the rights secured by the contract regardless of their affiliation with any organization of employees. . . . The representatives of the majority represent the whole craft or class in the making of an agreement for the benefit of all. . . ."

[3] Compare the House Committee Report on the N. L. R. A. (H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 20-22) indicating that although the principle of majority rule "written into the statute books by Congress in the Railway Labor Act of 1934" was to be applicable to the bargaining unit under the N. L. R. A., the employer was required to give "equally advantageous terms to nonmembers of the labor organization negotiating the agreement." See also the Senate Committee Report on the N. L. R. A. to the same effect. S. Rep. No. 573, 74th Cong., 1st Sess., p. 13.

be deemed to dispense with all duty toward those for whom it is exercised unless so expressed.

We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf. *J. I. Case Co.* v. *Labor Board*, *supra*, 335, but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them.

This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit. Cf. *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 509-510, 512 and cases cited; *Washington* v. *Superior Court*, 289 U. S. 361, 366; *Metropolitan Co.* v. *Brownell*, 294 U. S. 580, 583. Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages hours and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations. Cf. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500; *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337; *Hill* v. *Texas*, 316 U. S. 400.

The representative which thus discriminates may be enjoined from so doing, and its members may be enjoined from taking the benefit of such discriminatory action. No more is the Railroad bound by or entitled to take the benefit of a contract which the bargaining representative is prohibited by the statute from making. In both cases the right asserted, which is derived from the duty imposed by the statute on the bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct. "The extent and nature of the legal consequences of this condemnation, though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted." *Deitrick* v. *Greaney*, 309 U. S. 190, 200-201; *Board of County Commissioners* v. *United States*, 308 U. S. 343; *Sola Electric Co.* v. *Jefferson Co.*, 317 U. S. 173, 176-7; cf. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363.

So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft. While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith. Wherever necessary to that end, the union is required to consider requests of non-union members of the craft and expressions of their views with respect to collective bargaining with the employer and to give to them notice of and opportunity for hearing upon its proposed action.

Since the right asserted by petitioner "is . . . claimed under the Constitution" and a "statute of the United States", the decision of the Alabama court, adverse to that contention is reviewable here under § 237(b) of the Judicial Code, unless the Railway Labor Act itself has excluded petitioner's claims from judicial consideration. The question here presented is not one of a jurisdictional dispute, determinable under the administrative scheme set up by the Act, cf. *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297; *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338; *Brotherhood of Railway & Steamship Clerks* v. *United Transport*

Service Employees, 320 U. S. 715, 816, or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration. *General Committee* v. *M.-K.-T. R. Co., supra*, 332, 337. There is no question here of who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board, *Switchmen's Union* v. *National Mediation Board, supra*; *General Committee* v. *M.-K.-T. R. Co., supra*. Nor are there differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board.

Section 3, First (i), which provides for reference to the Adjustment Board of "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements", makes no reference to disputes between employees and their representative. Even though the dispute between the railroad and the petitioner were to be heard by the Adjustment Board, that Board could not give the entire relief here sought. The Adjustment Board has consistently declined in more than 400 cases to entertain grievance complaints by individual members of a craft represented by a labor organization. "The only way that an individual may prevail is by taking his case to the union and causing the union to carry it through to the Board." Administrative Procedure in Government Agencies, S. Doc. No. 10, 77th Cong., 1st Sess., Pt. 4, p. 7. Whether or not judicial power might be exerted to require the Adjustment Board to consider individual grievances, as to which we express no opinion, we cannot say that there is an administrative remedy available to petitioner or that resort to such proceedings in order to secure a possible administrative remedy, which is withheld or denied, is prerequisite to relief in equity. Further, since § 3, First (c) permits the national labor organizations chosen by the majority of the crafts to "prescribe the rules under which the labor members of the Adjustment Board shall be selected" and to "select such members and designate the division on which each member shall serve", the Negro firemen would be required to appear before a group which is in large part chosen by the respondents against whom their real complaint is made. In addition § 3, Second provides that a carrier and a class or craft of employees, "all acting through their representatives, selected in

accordance with the provisions of this Act", may agree to the establishment of a regional board of adjustment for the purpose of adjusting disputes of the type which may be brought before the Adjustment Board. In this way the carrier and the representative against whom the Negro firemen have complained have power to supersede entirely the Adjustment Board's procedure and to create a tribunal of their own selection to interpret and apply the agreements now complained of to which they are the only parties. We cannot say that a hearing, if available, before either of these tribunals would constitute an adequate administrative remedy. Cf. *Tumey* v. *Ohio*, 273 U. S. 510. There is no administrative means by which the Negro firemen can secure separate representation for the purposes of collective bargaining. For the Mediation Board "has definitely ruled that a craft or class of employees may not be divided into two or more on the basis of race or color for the purpose of choosing representatives".[4]

In the absence of any available administrative remedy, the right here asserted, [illegible] to a remedy for breach of the statutory duty of the bargaining representative to represent and act for the members of a craft. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction. *Switchmen's Union* v. *National Mediation Board*, *supra*, 306; *Stark* v. *Wickard*, 321 U. S. 288, 306-7. Here, unlike *General Committee* v. *M.-K.-T. R. Co.*, *supra*, and *General Committee* v. *Southern Pacific Co.*, *supra*, there can be no doubt of the justiciability of these claims. As we noted in *General Committee* v. *M.-K.-T. R. Co.*, *supra*, 331, the statutory provisions which are in issue are stated in the form of commands. For the present command there is no mode of enforcement other than resort to the courts, whose jurisdiction and duty to afford a remedy for a breach of statutory duty are left unaffected. The right is analogous to the statutory right of

[4] National Mediation Board, The Railway Labor Act and the National Mediation Board, p. 17; see In the Matter of Representation of Employees of the Central of Georgia Ry. Co., Case No. R-234; In the Matter of Representation of Employees of the St. Paul Union Depot Co., Case No. R-635, set aside in Brotherhood of Railway & Steamship Clerks v. United Transport Service Employees, 137 F. 2d 817, reversed on jurisdictional grounds, 320 U. S. 715.

employees to require the employer to bargain with the statutory representative of a craft, a right which this Court has enforced and protected by its injunction in *Texas & New Orleans Ry. Co.* v. *Brotherhood of Railway Clerks, supra,* 556-557, 560, and in *Virginian Railway* v. *System Federation, supra,* 548, and like it is one for which there is no available administrative remedy.

We conclude that the duty which the statute imposes on a union representative of a craft to represent the interests of all its members stands on no different footing and that the statute contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for breach of that duty.

The judgment is accordingly reversed and remanded for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice BLACK concurs in the result.

Mr. Justice MURPHY, concurring.

The economic discrimination against Negroes practiced by the Brotherhood and the railroad under color of Congressional authority raises a grave constitutional issue that should be squarely faced.

The utter disregard for the dignity and the well-being of colored citizens shown by this record is so pronounced as to demand the invocation of constitutional condemnation. To decide the case and to analyze the statute solely upon the basis of legal niceties, while remaining mute and placid as to the obvious and oppressive deprivation of constitutional guarantees, is to make the judicial function something less than it should be.

The constitutional problem inherent in this instance is clear. Congress, through the Railway Labor Act, has conferred upon the union selected by a majority of a craft or class of railway workers the power to represent the entire craft or class in all collective bargaining matters. While such a union is essentially a private organization, its power to represent and bind all members of a class or craft is derived solely from Congress. The Act contains no language which directs the manner in which the bargaining representative shall perform its duties. But it

cannot be assumed that Congress meant to authorize the representative to act so as to ignore rights guaranteed by the Constitution. Otherwise the Act would bear the stigma of unconstitutionality under the Fifth Amendment in this respect. For that reason I am willing to read the statute as not permitting or allowing any action by the bargaining representative in the exercise of its delegated powers which would in effect violate the constitutional rights of individuals.

If the Court's construction of the statute rests upon this basis, I agree. But I am not sure that such is the basis. Suffice it to say, however, that this constitutional issue cannot be lightly dismissed. The cloak of racism surrounding the actions of the Brotherhood in refusing membership to Negroes and in entering into and enforcing agreements discriminating against them, all under the guise of Congressional authority, still remains. No statutory interpretation can erase this ugly example of economic cruelty against colored citizens of the United States. Nothing can destroy the fact that the accident of birth has been used as the basis to abuse individual rights by an organization purporting to act in conformity with its Congressional mandate. Any attempt to interpret the Act must take that fact into account and must realize that the constitutionality of the statute in this respect depends upon the answer given.

The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed or color. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn it wherever it appears in the course of a statutory interpretation.